IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

ARBITRATION REQUEST No.65 of 2005

PETITIONER:-

M.C. LAKSHMANAN AND COMPANY
ENGINEERING CONTRACTORS, HOSPITAL ROAD,
THALASSERY-670 101, KANNUR DISTRICT.

BY ADV. SRI.MEIJO KURIAN PUVATHINGAL
SMT.PREMY MEIJO

RESPONDENT:-

THE SECRETARY,
THE BADAGARA SAHAKARANA ASHUPATHRI LIMITED NO.D.2411,
CONVENT ROAD, VADAKARA-673 101,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.R.RAMACHANDRA MENON.

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

V.K.Bali,C.J.

Arbitration Request No.65 of 2005

Dated, this the 22nd day of November, 2006

ORDER

V.K.Bali,C.J. (Oral)

The prayer made in this application filed under Section 11(4) and (5) of the Arbitration & Conciliation Act, 1996, hereinafter referred to as 'Act of 1996' is for appointment of an Arbitrator. Clause 20 of Annexure-A reads as follows:-

> "The Owner as well as the Contractor agree to refer any dispute arising out of this agreement, to a mutually acceptable arbitrator, whose decision will be final and each of them agree to accept and abide the decisions of such arbitrator".

2. This matter is pending since 2005. Earlier, counsel for the respondent was seeking adjournments to file counter affidavit. On 10.11.2006, the counsel for the respondent stated that there is a chance for out of Court settlement. On his request, the matter was adjourned and it has been mentioned that if there is no settlement by the date fixed, counter affidavit must be filed. No counter affidavit was filed. It is, however, still being urged by

the respondent that there is a chance of out of Court settlement. This has been stoutly denied by the learned counsel representing the petitioner, who states that the matter is pending in this Court for the last 1½ years and neither the respondent is making payment nor permitting this case to be proceeded with.

3. As per pleadings, which remain uncontroverted, tenders were invited for the subject work by the Secretary, Badagara Sahakarana Ashupathri Limited for the construction of a Co-operative hospital at Badagara. The petitioner was one of the bidders and on opening the tenders, it was found that his offer was the lowest at 11.27% below the total value as assessed by the owner. The contract for the work of construction of Co-operative hospital was started on 8.3.2001 and was completed on 27.3.2004. The dispute then surfaced between the parties and notice as contemplated under the Act of 1996 was issued, which was also acknowledged by the respondent. The dispute, as per the case set out, is to be referred to Arbitrator as per the clause contained in the agreement Annexure-A quoted above. In the facts as mentioned above, which remain uncontroverted, the

request has to be accepted as such and an order appointing Arbitrator has to be passed.

4. With the consent of parties, I appoint Sri.N.Sukumaran, Retired District Judge, residing at "Triveni", Warriam Road, Ernakulam, Cochin - 682 015 as sole Arbitrator to go into the dispute.

Disposed of accordingly.

Sd/-
V.K.Bali
Chief Justice

vku/-

- true copy -

P.A.to Judge.